IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.949 OF 2004
IN
NOTICE OF MOTION NO.____ OF 2004
IN
S.C. SUIT NO.5047 OF 2004

Ishwar Gopal Dumli).. Appellant (Org.Plaintiff)

versus

Mayfair Housing and others).. Respondents (Org.Defendants)

Mr.M.U.Pandey with Mr.Rakesh M.Pandey for the Appellant.

Mr.Y.S.Jahagirdar with Mr.P.S.Dani i/b.Godfrey D'Silva for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 3RD NOVEMBER 2004

P.C. :

. This Appeal From Order is directed against an order passed by the trial Court refusing to grant interim relief and dismissing the Motion taken out by the Appellant-Plaintiff. The Plaintiff has filed a Suit against Mayfair Housing and one Puran Motiram Ramavat, who admittedly are not owners of the suit lands. The Plaintiff has described the Defendants as being developers of the suit lands. The injunction sought in the plaint is for restraining the Defendants permanently by mandatory injunction from dispossessing the Plaintiff

from the suit property bearing Survey No.132 admeasuring about 1 acre 14 3/4 , 133 Hissa No.2-B admeasuring 1 acre 13 2/3 gunthas both of village Kandivli, Taluka Borivali, Mumbai Suburban District along with the structure thereon without following due process of law. The Plaintiff has claimed that he is in possession of the suit property for the last sixty years through his predecessor-in-title who according to him had acquired title to the lands by adverse possession. The Plaintiff relies on a 7/12 extract which is of the year 1988-89 showing his name as being the cultivator. However, there is an order passed by the Additional Chief Secretary and Officer on Special Duty (Appeals), Revenue and Forests Department, Government of Maharashtra dated 24th March 1995 holding that the name of the Plaintiff would appear in the prescribed register in Form No.XIV of unauthorized persons cultivating lands for the year 1989-90. There is no 7/12 extract produced for the subsequent years. Moreover, there does not appear to be a dispute that the Plaintiff is in unauthorised possession of the suit lands. The question, therefore, is whether a person in unauthorised possession is entitled to an injunction by way of interim relief ?

2. The Suit has been filed against the developers of the suit lands. The owners of the suit lands in fact have not been joined as party Defendants to the Suit.

The Plaint discloses that the Plaintiff has first claimed that he is in settled possession by way of adverse possession for the last sixty years. A diametrically contrary plea is then raised by the Plaintiff that although his possession may be unauthorised, it should be protected.

3. The trial Court has correctly concluded that the Plaintiff is not entitled to any relief. The settled possession which the Plaintiff claims on account of adverse possession does not appear to be prima facie correct. In any event, when the Additional Chief Secretary and Officer on Special Duty (Appeals), Revenue and Forests Department has held that the Plaintiff is in unauthorised possession, it would be difficult to accept the submission made by the Plaintiff that he is entitled to relief at this stage because he is in adverse possession of the suit lands. A person who is in unauthorised possession cannot claim interim relief or a temporary injunction because possession would obviously have to be lawful. In these circumstances the trial Court cannot be faulted for not granting temporary injunction. Appeal From Order dismissed.

4. In view of the Appeal From Order being disposed of, nothing survives in Civil Application No.1307 of 2004 and the same is disposed of accordingly.